

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 741 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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LAMBHA SEVA SAHAKARI MANDALI LTD, THRO' B P PATEL

Versus

MOHANBHAI C PATEL

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Appearance:

MR RM VIN for Petitioner

MR MA BUKHARI AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/07/2000

ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. The challenge has been made by the petitioner in this  
petition under Articles 226 and 227 of the Constitution

of India to the orders Annexure A & B of the respondent Nos. 2 and 3 respectively. Under the order Annexure-A the Prant Officer, Viramgam Prant at Ahmedabad dated March, 1986 declaring the transfer of the land in dispute as void and consequently the entries Nos. 2555, 2556 and 2557 in the revenue records made in favour of the petitioner were set aside. The fine of Rs.100/= was also imposed on the original land owner. The order was also passed for summary vacation of the petitioner. Under Annexure-B dated 4.1.88 the appeal filed by the petitioner against the order of the Prant Officer was rejected.

#. The learned counsel for the petitioner inter alia contended that the Prant Officer initiated suo motu proceedings for cancellation of the sale of the land in dispute as well as the revenue entries under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 after 4 years of the date of the sale which is not permissible. Carrying this contention further the learned counsel for the petitioner contended that though point was very specifically raised before the appellate authority and the decision of the Hon'ble Supreme Court has also been cited but the appellate authority even has not referred to this contention what to say to decide this contention. The learned counsel for the petitioner contended that it is an error apparent on the face of the order of the appellate authority. Concluding his submission, the learned counsel for the petitioner submitted that once a point has been raised by the appellant in the appeal whether it has to be accepted or not the same has to be considered and decided.

#. The learned counsel for the respondents supported the order passed by the appellate authority.

#. From the judgment of the appellate authority, I find that the contention re. the limitation of initiation of suo motu proceedings for the cancellation of the sale deed of the disputed land as well as revenue entries has been raised by the appellant-petitioner. Not only this but a decision of Supreme Court has also been cited. The appellate authority in the judgment even has not referred this contention of the learned counsel for the petitioner raised therein what to say to decide the same. The learned counsel for the respondents is not able to point out anything from the judgment of the appellate authority that this contention raised by the learned counsel for the petitioner has been considered and decided. Where a contention is raised by the appellant before the appellate authority irrespective of the fact what the

appellate authority will decide on merits thereof the same has to be considered and decided. If that has not been done certainly it is an error apparent on the face of the order and only on this ground the orders passed by the appellate authority cannot be allowed to stand.

#. As a result of the aforesaid discussion this petition is allowed and the order of the appellate authority at Annexure-B dated 4.1.88 is quashed and set aside and the appellate authority is directed to restore the appeal to its original number and after giving notice and opportunity of hearing to all the parties to the appeal decide the appeal afresh in accordance with law.

#. Rule is made absolute accordingly. The respondent-State is directed to pay Rs.1,000/= towards costs of the petition to the petitioner.

(S.K.Keshote, J.)

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